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ceased Persons.—Where defendant claimed that he purchased a deceased heir's interest in an estate, but was incompetent to testify to that fact, he should be given an opportunity to show what payments had been made on the purchase, and they should be deducted from recovery on behalf of such deceased heir.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 941.]

Appeal from Circuit Court, Scott County.

Bill by E. L. Taylor and others against Ira P. Robinett, who cross-complained. From the decree, defendant appeals. Reversed.

S. H. Bond and *Coleman & Carter*, all of Gate City, for appellant.

W. S. Cox, of Gate City, for appellees.

ROBERTS *v.* HAGAN.

Sept. 20, 1917.

[93 S. E. 619.]

1. Injunctions (§§ 36 (2), 37*)—Relief to Purchaser of Land—Defective Title.—To entitle a purchaser of real estate to relief in equity against the collection of the purchase money on the ground of defective title, the sale having been consummated by execution and acceptance of a general warranty deed without other covenants, the title must be questioned by a suit either prosecuted or threatened, or it must be clearly shown that the title is defective.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 594.]

2. Injunction (§ 30 (2)*)—Relief to Purchaser of Land—Defective Title.—Where the vendor of land derived his claim thereto from the heirs of a decedent, uncertainty about the existence of such decedent's will, and about its provisions if it did exist, did not constitute such clear defect in the title as to afford the successor of the purchaser ground for relief against payment of the purchase money, he having assumed payment of the vendor's lien, it being safe to assume that the provisions of the will, if one was made, were as alleged in the vendor's partition suit against certain heirs; the vendor having acquired the interests of the other heirs.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 594.]

3. Insane Persons (§ 71*)—Sale of Land—Collateral Attack.—Sale of an alleged insane person's interest in a decedent's lands in a partition suit on petition of her brother who claimed to be her committee, the evidence of his appointment as such being unsatisfactory, and the evidence of her insanity being insufficient, while the proceedings were wanting in some of the jurisdictional requirements

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

of the statute relating to the sale of lands of persons under disability, was void and subject to collateral attack.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 687.]

4. Partition (§ 98*)—Allotment When Partition Cannot Be Made—Statute.—By a proper method, under Code 1904, § 2564, providing that when partition cannot be conveniently made the entire subject may be allotted to any party who will accept it and pay therefor, creating and conferring a special statutory jurisdiction on the court, it would have been within the power of the court, in a partition suit by the purchaser of the interest of some heirs in a decedent's lands against the other heirs, to have assigned to the purchaser the entire estate to be partitioned on his payment to an heir of the amount to which she would be entitled for her interest.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 773, 783.]

5. Partition (§ 98*)—Sale of Land—Statute.—Code 1904, § 2564, creates and confers a special statutory jurisdiction on the court, and failure to comply therewith was fatal to the proceeding, equity having no inherent jurisdiction to order sale of land for partition.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 790, 793.]

6. Partition (§ 100*)—Preliminary Sale of Small Interest—Statute.—Code 1904, § 2564, providing that when partition cannot be conveniently made the entire subject may be allotted to any party who will accept it and pay to the other parties such sums of money as their interest therein may entitle them to, etc., does not warrant selling by public and enforced sale, as preliminary to partition, a small undivided interest in the estate, though the party suing for partition became the purchaser and finally acquired all interests in the land.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 791.]

7. Partition (§ 100*)—Allotment of Part and Sale of Residue.—Such sale was unauthorized under such part of Code 1904, § 2564, as provides for the allotment of part and a sale of the residue.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 789, 791.]

8. Partition (§ 100*)—Sale of Part and Allotment of Residue—Statute.—Where there is a sale of part of the land, and an allotment of the residue under Code 1904, § 2564, the part allotted must be divided in kind, and the residue must be sold and the proceeds divided; the division in each case being among all the parties in interest.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 783, 789.]

9. Vendor and Purchaser (§ 260 (1)*)—Priority of Vendor's Lien.—No lien or incumbrance on land created or suffered by its purchaser could prejudice the vendor's prior lien for the purchase money.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 573, 574.]

Appeal from Circuit Court, Wise County.

Suit by C. F. Hagan, trustee, against W. H. Roberts and another. From a decree for complainant, the named defendant appeals. Reversed, and cause remanded, with directions.

E. M. Fulton, of Wise, for appellant.

Bond & Bruce, of Wise, for appellee.

MARTIN *v.* COMMONWEALTH. (No. 1.)

Sept. 20, 1917.

[93 S. E. 623.]

Physicians and Surgeons (§ 6 (5)*)—Offenses—"Practicing Medicine" without License.—Acts 1916, c. 84, § 11, declares that nothing in the act shall be construed to affect any nonitinerant person or manufacturer, who mechanically fits or sells lenses, artificial eyes, etc., or is engaged in a mechanical examination of eyes for the purpose of adjusting spectacles, etc. Section 12 declares that any person shall be regarded as "practicing medicine," within the meaning of the act, who shall use in connection with his name the words or letters "Dr.," "Doctor," "Professor," "M. D.," or "Healer," or any other title, word, letter, or designation, intending to designate him as a practitioner of medicine, or of being able to heal, cure, or relieve those suffering from injury or disease. Accused obtained for himself and his associates a charter of incorporation under the name of "Dr. J. Harry Martin, Incorporated," and displayed on the front door and windows of his place of business the name "Dr. J. Harry Martin, Incorporated, Eyes Exclusively," and "Dr. J. Harry Martin, Incorporated, Optometrist." Held that as the business legend clearly indicated accused was engaged only in fitting glasses, he was not guilty of practicing medicine without having obtained a license.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Practice of Medicine.* For other cases, see 11 Va.-W. Va. Enc. Dig. 203.]

Error to Corporation Court of Roanoke.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.